In the Punjab and Haryana High Court, Chandigarh.

Date of decision: 17.09.2007.

Mrs. Sarabjit Kaur and others ... Appellants.

Versus

Vikram Chehal and others ... Respondents.

Present: Mr.Ashwani Arora, Advocate,for the appellants.

Mrs.Shamsher Kaur,Advocate,for respondent No.3.

Mr.Ramesh Chopra, Advocate, for respondent No.4.

PERMOD KOHLI, J.

This is claimant's appeal seeking enhancement of the compensation amount. The appellant-claimants are the legal heirs of Gurdev Singh deceased, who met with an accident on 26.12.2003 caused by Truck No.HR 45-7195, which was being driven by Vikram Chehal and owned by Ashok Kumar. The vehicle was insured with the Oriental Insurance Company at the time of the accident. According to the appellant-claimant's case, the deceased was going on foot from Zirakpur to K- Area of the Zirakpur Kalka Road. He was followed by his wife Sarabjit Kaur and friend Trilochan Singh. It was mentioned in the claim petition that they were walking on the extreme left side of the road and when they reached near the Yadvindra Bridge near K-Area, the offending truck driven by its driver, Vikram Chehal, came from behind and hit Gurdev Singh, who died as a result of injuries sustained in accident. It is further alleged

that the truck was driven in a rash and negligent manner First Information Report came to be registered with the concerned police station. The learned M.A.C.T. framed the following issues:-

(1) Whether the claimants are the legal heirs of deceased? OPP

(2) Whether the deceased died in a motor vehicular accident which took place due to the rash and negligent driving of respondent No.1 while he was driving truck No.HR 45-7195? OPP

(3) If issues No.1 and 2 are proved to what amount of compensation the claimants are entitled to and from whom of the respondents? OPR

(4) Whether respondent No.1 was not holding a valid driving licence? OPR

(5) Relief.

The claimants are aggrieved of the findings of the learned Tribunal on the question of contributory negligence; assessment of the income of the deceased and the non-consideration of the relevant factors, like future income of the deceased, consortium and other permissible

claims.

While deciding issue No.2, the learned Tribunal has held that the negligence is to be apportioned between the driver of the offending vehicle and the deceased-pedestrian. This apportionment has been made on the basis of the opinion of the learned Tribunal that a pedestrian also has the duty of care while walking on the road when there is heavy vehicular traffic. According to the learned Tribunal, no evidence has been brought on record on behalf of the claimants that the deceased was going on a Kaccha Path when he was hit by the truck from behind. The learned Tribunal, accordingly, held that the deceased was walking on metalled road when he was hit by the offending vehicle.

While going through the findings of the learned Tribunal on this question, I am shocked to find that these findings have been returned by the learned Presiding Officer of the Tribunal without any evidence on record. It is admitted case that neither the driver of the truck appeared as a witness nor any other eye witness was produced by the respondents to rebut the evidence led by the claimants. The Tribunal itself has noticed in paragraph 10 of the judgment that the respondents have not led any evidence to rebut the statement of PW-3. On what basis the Tribunal has arrived at the findings of contributory negligence, is neither evident from the impugned order nor forthcoming from material on record. It appears to me that the same is totally based upon conjectures and surmises and imagination of the learned Tribunal. Contributory negligence is a question of fact which is required to be pleaded and proved. In the present case, neither there is any pleading to this effect nor any proof whatsoever. There is no material on record even to suggest contributory negligence on the part

of the deceased. This finding of the learned Tribunal is, thus, totally perverse and is liable to be set aside.

Second grievance of the claimants is with regard to the assessment of the dependency. The learned Tribunal has assessed the dependency at Rs.4000/- per month. The deceased was 40 years of age at the time of death and was working as a Pipe Fitter in the MES. He was drawing Rs.5838/- per month, as salary. Applying the multiplier of 16, the learned Tribunal has assessed the compensation at Rs.7,68, 000/- and by making deductions of 20% of the compensation on account of the alleged contributory negligence, the amount has been reduced to Rs. 5, 76,000/-. The appellant's claim is that instead of making deduction of 1/3rd amount as personal expenses, the Tribunal should have applied unit system for determining the dependency and only 1/5th of the gross income should have been deducted. It has also been pleaded that the Tribunal has not taken into consideration the future income of the deceased who was only 40 years of age and had 18 years more service to his credit. He would have earned, at least, double the salary till his superanuation. Apart from this, loss of consortium to the widow, funeral expenses and loss of love and affection to the children, have not been taken into consideration. The gross income of the deceased has been shown as Rs.5838/- per month. The claimants have placed on record the salary certificate where-from it appears that the gross-income of the deceased including allowances was Rs.7136/-, out of which a sum of Rs.2978/- has been deducted on account of House Building Advance. However, this amount is definitely a part of the income of the deceased and is utilized for repayment of loan. But, the learned Tribunal has assessed the gross income of the deceased at Rs.5838/- by

excluding the deductions from his salary.

As has been held in the case of Kerala State Road Transport Corporation Vs. Susamma Thomas and others, 1994 (2) P.L.R. 1 (SC) that the gross income of the deceased has to be taken into consideration and any contribution made cannot be ignored. The concept of net income is to work out that income which show that dependency and not the income which is not worked for the purposes of income-tax etc. This judgment has been followed by a Division Bench of this Court in the case of New India Assurance Co. Ltd. Vs. Bimla Devi and others, (2006-3) P.L.R., 563, wherein the following observations have been made:-

> "9. The last argument of the learned counsel is equally devoid of merit wherein it is submitted that the gross income, which includes the element of GPF should not have been taken as the base for working out the dependency. The argument is liable to be rejected out rightly because the concept of net income is to work out that income which show that dependency and not the income which is not worked for the purposes of income tax etc. The element of GPF amounting to Rs.4,000/- and the amount of Rs.12,500/- contributed to GPF advance in instalments would necessarily be construed

as income for the purpose of computing the dependency.

For taking into consideration the future prospects of the deceased, reliance is placed on the case of Sarla Dixit and anr. Vs. Balwant Yadav and others, 1996 (2), PLR, 656 (SC), wherein the Apex Court observed that protection of future prospects can be reflected by calculating the gross-income at the time of death and then increase the same by double the amount. The average of both the figures would represent the approximate loss figures. In the present case, the gross-income of the deceased was Rs.7136/- say Rs.7100/- per month and if this amount is doubled, it comes to Rs.14,200/- per month. By adding the present income with the future income, the total amount comes to Rs.21,300/-, the average of which comes to Rs.10,650/-, say Rs.10,700/- . This can be considered to be the gross-income and dependency will be worked out by deducting 1/3rd amount i.e. Rs.3570/-. After deducting 1/3rd from total of Rs.10,700/-, the dependency comes to Rs.7130/-, say Rs.7200/- per month. Annual dependency would be 7200 X 12= Rs.86, 400/-.

The learned Tribunal has applied multiplier of 16. Keeping in view the age of the deceased as 40 years at the time of his death. However, since future prospectus are taken into consideration, I feel it is reasonable to apply multiplier of 12 in the present case. The amount of compensation, thus, comes to Rs.86, 400/- X 12=9,16,800/- He is also entitled to consortium of Rs.15,000/-, total Rs.9,31,800/-.

The learned Tribunal has awarded interest at the rate of 9% per annum from the date of the filing of the petition till realisation. However, I feel that the interest awarded should be at the rate of 7.5 per cent per annum keeping in view the prevailing rate of interest.

In view of the above, this appeal is, accordingly, allowed and award is modified as noticed above.

September 17, 2007. (PERMOD KOHLI)
BLS JUDGE

Note: Whether to be referred to the Reporter: YES